

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

v.

Appeal No. 22-4689

DIANA TOEBBE,

Appellant.

**MOTION FOR SUSPENSION OF BRIEFING PENDING RULING ON THE
UNITED STATES' MOTION TO DISMISS APPEAL**

The United States, pursuant to Local Rule 27(f)(1), moves the Court to suspend the briefing schedule during the pendency of the United States' Motion to Dismiss. The basis for this motion is that the United States seeks to have the issue of the appellant's waiver of her appellate rights decided prior to the preparation and filing of briefs in this matter. 4th Cir. R. 27(f)(2) ("Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or on other procedural grounds should be filed within the time allowed for the filing of the response brief."); *United States v. Myers*, 849 Fed.Appx. 430, n.1 (4th Cir. 2021) (per curiam).

As the Eleventh Circuit Court of Appeals observed,

Motions to dismiss based upon sentence appeal waivers should be decided at the earliest stage in the process at which it is feasible to do

so, and except in extraordinary circumstances should not be carried with the case until after briefing. Carrying such a motion with the case until after briefing deprives the government of the benefit that it has bargained for and obtained in the plea agreement containing the sentence waiver.

United States v. Buchanan, 131 F.3d 1005, 1008 (11th Cir. 1997) (per curiam).

Respectfully submitted,

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NOTIFICATION OF COUNSEL

Pursuant to Local Rule 27(a), I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, notified counsel for the appellant of the intended filing of the foregoing motion to suspend briefing. Defense counsel advised that they oppose the motion to suspend briefing and intend to file a response.

/s/ Jarod J. Douglas
Jarod J. Douglas
Assistant United States Attorney

CERTIFICATE OF SERVICE

I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that, on January 18, 2023, the foregoing **MOTION FOR SUSPENSION OF BRIEFING PENDING RULING ON THE UNITED STATES' MOTION TO DISMISS APPEAL** was served upon the appellant via CM/ECF and by delivering a copy to her attorneys:

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